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THE HONORABLE MARY K. DIMKE

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

MARISSA REYES, LEAGUE OF  
UNITED LATIN AMERICAN  
CITIZENS, LATINO COMMUNITY  
FUND,

Plaintiffs,

v.

BRENDA CHILTON, in her official  
capacity as Benton County Auditor  
and Canvassing Review Board  
member, ANDY MILLER, in his  
official capacity as Benton County  
Canvassing Review Board member,  
XAN AUGEROT, in his official  
capacity as Benton County Canvassing  
Review Board member, CHARLES  
ROSS, in his official capacity as  
Yakima County Auditor and  
Canvassing Review Board Member,  
JOSEPH BRUSIC, in his official  
capacity as Yakima County  
Canvassing Review Board member,  
RON ANDERSON in his official  
capacity as Yakima County  
Canvassing Review Board member,  
SKIP MOORE, in his official capacity  
as Chelan County Auditor and  
Canvassing Review Board member,  
DOUGLAS SHAE, in his official  
capacity as Chelan County Canvassing  
Review Board member, BOB  
BUGERT in his official capacity as  
Chelan County Canvassing Review

No. 4:21-cv-05075-MKD

**JOINT MOTION TO MODIFY  
THE SCHEDULING ORDER**

**NOTED FOR HEARING:  
03/03/23**

**Without Oral Argument**

JOINT MOTION TO MODIFY THE SCHEDULING  
ORDER - 1  
CASE NO. 4:21-cv-05075-MKD

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Board member,

Defendants.

## I. INTRODUCTION

The parties respectfully request that the Court modify pre-trial dates in the Fourth Bench Trial Scheduling Order. Dkt. No. 75. Good cause supports the modification, which would permit the parties to take expert depositions before filing any *Daubert* motions.

## II. BACKGROUND

In fall of 2022, the parties jointly moved to amend the case schedule. Dkt. No. 72. The Court granted this motion in part. Dkt. No. 75 at 2. It set a trial date of October 2, 2023, *id.*, and the following relevant intermediate dates:

Event	Date
Plaintiff – Initial Experts	January 5, 2023
Defendant – Initial Experts	February 3, 2023
Plaintiff – Rebuttal Experts	March 6, 2023
Motions to compel discovery filed	April 5, 2023
Discovery Cutoff	May 5, 2023
Notice of to-be-adjudicated claims and affirmative defenses filed	May 12, 2023
All <i>Daubert</i> motions filed	March 16, 2023
All dispositive and state certification motions filed	May 12, 2023

Dkt. No. 75 at 16–17.

All parties met deadlines to disclose initial expert reports. *See* Dkt. Nos. 79, 80. With Plaintiffs’ rebuttal reports due ten days before *Daubert* motions, the parties face a narrow window to take expert depositions and prepare any necessary motions.

1 Complicating this, all parties disclosed certain experts with deposition availability  
 2 only after the current deadline for *Daubert* motions. *See* Dkt. 79 at 2–4; Dkt. 80 at  
 3 2.

4 The parties conferred regarding this schedule. Plaintiffs also noted a need for  
 5 additional time to prepare rebuttal expert reports in light of the recent illness of one  
 6 of their experts and the number of signatures a defense expert report placed at issue  
 7 and which a plaintiff rebuttal expert must review. The parties agreed to request  
 8 modification to the deadlines to serve rebuttal expert reports, file motions to compel  
 9 discovery, file notice of to-be-adjudicated claims, file *Daubert* motions, and file  
 10 dispositive motions.

### 11 III. ARGUMENT

12 The Court is required to issue a case schedule, Fed. R. Civ. P. 16(b), but still  
 13 retains “broad discretion in supervising the pretrial phase of litigation.” *Johnson v.*  
 14 *Mammoth Recreations, Inc.*, 975 F.2d 604, 607 (9th Cir. 1992). Accordingly, the  
 15 Court may amend the schedule “for good cause.” Fed. R. Civ. P. 16(b)(4). The  
 16 “‘good cause’ standard primarily considers the diligence of the party seeking the  
 17 amendment” and good cause is present if a case schedule “cannot reasonably be met  
 18 despite the diligence of the party seeking the extension.” *Id.*

19 The parties cannot meet the current case schedule despite diligence. Plaintiffs  
 20 contend with an expert recovering from illness and the need to consider voluminous  
 21 signatures addressed in the Defendants’ expert report. Both parties need to depose  
 22 experts and consider—and possibly draft—*Daubert* motions. The ten days between  
 23 the current rebuttal expert report deadline and the *Daubert* motion deadline provide  
 24 little time to evaluate expert opinions in light of rebuttals. The unavailability of both  
 25 sides’ experts for depositions during this period means that *Daubert* motions would  
 26 be uninformed by expert depositions. Accordingly, good cause exists to extend  
 27 expert report and *Daubert* motion deadlines.

Good cause also exists to extend other discovery and dispositive motion deadlines to accord with extended expert deadlines. These extensions will permit the parties additional time to conduct discovery following expert discovery and to consider dispositive motions in light of opening *Daubert* briefs.

Accordingly, the following deadline modifications are warranted:

Event	Current Date	Proposed Date
Plaintiff – Rebuttal Experts	March 6, 2023	March 27, 2023
Motions to compel discovery filed	April 5, 2023	May 5, 2023
All <i>Daubert</i> motions filed	March 16, 2023	May 19, 2023
Discovery Cutoff	May 5, 2023	June 2, 2023
Notice of to-be-adjudicated claims and affirmative defenses filed	May 12, 2023	June 9, 2023
All dispositive and state certification motions filed	May 12, 2023	June 9, 2023

These modifications permit the parties to prepare for trial on October 2, 2023, and leave other pre-trial dates unchanged. The parties therefore anticipate that these changes to intermediate case schedule dates will not unduly burden the Court.

#### IV. CONCLUSION

The parties respectfully request amendment of the Fourth Bench Trial Scheduling Order for the reasons and as described above.

1 DATED: February 24, 2023

2 LANE POWELL PC

3  
4  
5 By: s/Devon J. McCurdy

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***Attorneys for Plaintiffs***

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY THAT ON February 24, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will automatically generate a Notice of Electronic Filing (NEF) to all parties in the case who are registered users of the CM/ECF system. I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants: None.

Executed this 24th day of February, 2023, at Seattle, Washington.

By s/Erica Santosuosso  
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